

**The CASE of the Church of Scotland with relation to the
BILL for a Toleration to the Episcopal Dissenters to set
up Meeting-Houses, and use the English Service in Scotland.**

IN the Preamble there seems to a Mistake in Fact; for those of the Episcopal Way in Scotland never embrac'd the English Liturgy before the abolition of Episcopacy there; nor have any of the Episcopal Preachers who are allow'd to retain their Churches and Benefices there, since Episcopacy was abolish'd, offer'd to set up the English Liturgy in their Congregations: Nor do all those of the Episcopal Party who keep Meeting-Houses, use the English Liturgy; and of the few who do so, none have been prosecuted on that Account, but for disorderly Practices contrary to Law; and chiefly with respect to the Civil Government, to which they refuse Submission, or to take the Oaths. Nor is there any one Instance that Ceremonies have been allow'd in Churches which have not been establish'd by some Ecclesiastical Authority, in any Kingdom, Diocese or Province. Nor can they be establish'd by any such Authority now, because tho the Two Kingdoms be united in all Civil Matters, the Two Churches are establish'd for ever upon separate Foundations.

The first Clause allows the Episcopal Dissenters to set up Congregations for Worship in their own Manner, by Pastors Episcopally Ordain'd, to whom alone 'tis restricted in the second Clause, with Liberty to use the English Liturgy without Disturbance; and requires all Magistrates to protect, aid and assist such Ministers, and those of their Communion, in their Assemblies in any Town or Place in Scotland.

1. This is contrary to the Union-Act, Vol. 3. p. 733. which takes Notice, That it was expressly provided, as it really was by the Act for the Treaty, Vol. 3. p. 696. 'That the Commissioners for the Union should not treat of or concerning any Alteration of the Worship, Discipline and Government of the Church of Scotland as by Law establish'd; and that the said Treaty being reported to the Parliament, and it being reasonable and necessary that the true Protestant Religion, as at present profess'd within Scotland, with the Worship, Discipline and Government of the Church of Scotland, should be unalterably Secured; It does, p. 733. establish and confirm the said true Protestant Religion, and the Worship, Discipline and Government of the said Church, to continue without Alteration to the People of that Land in all succeeding Generations.

2. To allow such Meetings, with such a particular Emphasis only to Pastors Episcopally Ordain'd, is expressly contrary to the Claim of Right refer'd to in the Union-Act; and that Article of it, Vol. 3. p. 151. declaring, 'That Prelacy and the Superiority of any Office in the Church above Presbyters, is and hath been a great and insupportable Grievance and Trouble to this Nation, and contrary to the Inclinations of the Generality of the People ever since the Reformation, (they having reform'd from Popery by Presbyters) and therefore ought to be abolish'd, as it was accordingly, in pursuance of this Article, Vol. 3. p. 197. And as her Majesty accepted the Crown of Scotland upon these Terms, 'tis provided by the Union-Act, Vol. 3. p. 757. 'That all future Princes are to swear and subscribe inviolably to preserve and maintain the said Settlement of the True Protestant Religion, with the Government, Worship Discipline, Rights and Privileges of the Church of Scotland, as above Establish'd by the Laws of this Kingdom, in prosecution of the Claim of Right: And 'tis hereby Statute and Ordained, That this Act of Parliament, with the Establishment therein contain'd, shall be held and observed in all Times coming as a Fundamental and Essential CONDITION of any Treaty or Union to be concluded betwixt the Two Kingdoms, without any Alteration thereof, or Derogation thereto, in any sort, for ever. As also, That this Act of Parliament, with the Establishment therein contain'd, shall be insert and repeated in any Act of Parliament that shall pass for Agreeing and Concluding the said Treaty of Union betwixt the Two Kingdoms; and that the same shall be therein expressly declared to be a Fundamental and Essential Condition of the said Treaty of Union in all Time coming. — And that the Parliament of England may provide for the Security of the Church of England as they think expedient, to take place within the Bounds of the said Kingdom of England, and not derogating from the Security above provided for the Establishing of the Church of Scotland within the Bounds of this Kingdom. This Act is accordingly inserted in the Union-Act made by the Parliament of England, 5th Anne, Cap. 8th, Article 25th, Stat. at large, Vol. 3. p. 2471. So that to allow the Toleration propos'd, seems to weaken the Foundation of her Majesty's Title to the Crown of Scotland, which she receiv'd upon the Claim of Right, as well as a Fundamental Article of the Union, by which alone the Hanover Succession is establish'd in Scotland. Article 2d.

At the same time it seems to weaken the Security of the Church of England in her Doctrine, Worship, Discipline and Government, which is provided for in the same manner, and no otherwise by the Union-Act, which if kept to, must continue unalterable in all succeeding Ages to the People of England, notwithstanding any such Turn of Affairs as has formerly happen'd, from which the Church of England can't be exempted no more than the Church of Scotland, if the Union-Act comes once to be broke.

3. To oblige all Magistrates to protect, aid and assist the Episcopal Ministers, and those of their Communion, in their Assemblies, in any Town or Place in Scotland they think fit to choose, as in the First and Sixth Clauses of the Bill, seems not only to give them a Liberty to set up their Worship in Parish Churches and Chapels, which is more than Dissenters are allow'd in England, but in effect annuls all those Acts by which Magistrates are obliged to protect, aid and assist the Ministers and Assemblies of the Establish'd Church of Scotland. And particularly, (1) the Act for Settling the Quiet and Peace of the Church, Vol. 3. p. 333. by which Magistrates are obliged to give all due Assistance for making the Sentences and Censures of the Church and Judicatories thereof to be obey'd, or otherways effectual as Accords against all Ministers and Preachers that don't take and subscribe the Oath of Allegiance; and subscribe the Assurance, and also the Confession of Faith, declaring the same to be the Confession of his Faith, and that he owns the Doctrine therein contained to be the true Doctrine which he will constantly adhere to; and likewise that he owns and acknowledges Presbyterian Church Government to be the only Government of this Church, and that he will submit thereto and concur therewith, and never endeavour, directly or indirectly, the Prejudice or Subversion thereof; and likewise against all Ministers and Preachers that don't subscribe to observe, and do actually observe the Uniformity of Worship, and of the Administration of all publick Ordinances, as the same are at present perform'd and allow'd therein, or shall be hereafter declar'd by the Authority of the same; and likewise against such Ministers as are Scandalous, Erroneous, Negligent or Insufficient, who are declared to be subject to the Power and Censures of the Church.

2. It seems to derogate from the Act against intruding into Churches without a legal Call and Admission, Vol. III. P. 430. by which all such Preachers as intrude into any Church, Mansion, or Benefice, or exercise any part of the Ministerial Function within any Parish, without an Orderly Call from the Heretors and Eldership, and legal Admission from the Presbytery of the Bounds, are liable to the Penalties therein mentioned, and to be remov'd by the Magistrates upon Complaint from the Presbytery of the Bounds, or from any Person having their Warrant, &c.

3. It seems to derogate from the Act against Prophaneness, Vol. 3. p. 585, which orders all Persons who shall be excommunicate for not answering, or for not obeying and satisfying the Church, when process'd before them for Prophaneness and Immorality, or shall be declared by the Church to be Contumacious, upon Representation to the Sovereign, to be incapable of any publick Trust, Civil or Military, as appears by the Close of that Act.

The Third Clause of the Bill, That all such Pastors are to take the same Oaths to the Queen and Government, and in the same manner and place as the Presbyterian Clergy, seems not to be strong enough; for the Presbyterian Clergy are all known to be well affected to the Revolution, to Her Majesty, whom they own to be our only Lawful and Rightful Sovereign *de Jure*, as well as *de Facto*, and likewise firm to the Succession in the Protestant Line of *Hanover*, which they own to be a legal and good Establishment, according to our Constitution: Whereas the far greatest part of those who preach in Episcopal Meetings are known to be Non-jurants, and others save their Consciences with Swearing to the Queen as Sovereign *de Facto*; therefore, it would seem to be necessary, that the Episcopal Preachers, if tolerated, should be obliged to own Her Majesty *de Jure*, as well as *de Facto*, in the plain Meaning of the Words, without Equivocation or Mental Reservation, and to abjure the Pretender and the whole Popish Line; and likewise to pray for Queen *Anne* by Name, and for Her Royal Highness Princess *Sophia* Electress Dowager of *Hanover*, and the Royal Family of the Protestant Line, because it is known they equivocate by praying for the Sovereign or Queen in general, or for Princess *Sophia*, by which they intend the Pretender, his Mother the late Queen, and his supposed Sister, one of whose Names is *Sophia*.

In a Toleration of this kind, policy and order do require, that the Ministers who are indulg'd this favour, should be of the Protestant Religion at least, and for that reason the Dissenters in England are obliged to Sign the Doctrinal Articles of the Church of England, which is the Confession of Faith of that Church; and therefore for observing the decent Equality betwixt the two Churches in point of Security, intended by the Treaty, the Ministers now to be Tolerated in Scotland, ought to Sign the Confession of Faith, as it is insert'd in Act 5. Vol. 3. fol. 206. Parl. 1690. which is declar'd to be the Confession of Faith of that Church, with exception of such Chapters or Heads of the Confession, as concern the precise Heads of difference Tolerated; but if Gentlemen for punctilio (and there can be nothing else in it) will not admit this Confession to be the Test, yet at least the Episcopal Clergy in Scotland can have no exception against Signing and Swearing the Confession of Faith, which they were bound to Swear, Sign and Subscribe, and which they actually did Subscribe till the Revolution, according to the 6th Act of the Parl. 1681. Vol. 2. fol. 534.

It seems also necessary, that those who give a Call to such Episcopal Ministers, be obliged to take the Oaths and Assurance, as those who give a Call to the established Ministers are obliged to do by the Act for taking the Oath of Allegiance and Assurance, Vol. 3. p. 338, and p. 604; by which they are obliged, in the Sincerity of their Hearts, to assert, acknowledge and declare, that Her Majesty Queen *Anne* is the only Lawful and Undoubted Sovereign of this Realm, as well *de Jure*, as *de Facto*; and that they will Maintain and Defend Her Majesty's Title and Government against the Pretended Prince of *Wales* and his Adherents, and all other Enemies, &c. And it were to be wish'd that the Clause in the Bill appointing the Episcopal Clergy to take the Oath of Allegiance and Assurance, had been express'd in more plain Terms, for as it stands, 'tis so delicate and tender upon that Point, as if Men were afraid to touch a Sore.

The 6th Clause of the Bill for repealing the Act of 1695. against irregular Baptisms and Marriages, is scarce reconcilable to the Union Treaty, which ratifies the Presbyterian Government, and the Rights the Church stood possess'd of. 'Tis not consistent with civil Order and Policy, for 'tis obvious that the Registration of Baptisms in Meeting-Houses will be neglected, because of the too apparent Diffention betwixt the Regular and Episcopal Clergy, and the Articles of Marriages will expose the Matter of Succession and propinquity to inextricable Difficultys, for these Meeting-Houses being precarious as to their Settlement, and perhaps not numerous, the Proclamation of the Bans in those places will be no Publication: Besides, Legal Publication should be where the Legal Establishment is, because the Law only presumes that People come there, tho they Tolerate 'em to go elsewhere, and there can be no Scruple of Conscience in point of Marriage, except among Papists, who account it a Sacrament. Besides, 'tis inconsistent with the Equality of the two Churches, that the Dissenters in *England* should be prohibited the Solemnizing of Marriages, and the same should be allowed to the Episcopal Dissenters in *Scotland*.

That same Clause of the Bill is also against the Equality, which by the Union 'tis conceiv'd, ought to be between the two Churches, since it forbids any Disability or Incapacity upon such as resort to Episcopal Meetings; whereas those who resort to Dissenting Meetings in *England*, are made incapable of publick Posts by the Test Act, and that against Occasional Conformity, tho the *English* Dissenters are known to be firm to the Establish'd Government and the *Hanover* Succession, which cannot be said of the Episcopal Dissenters in *Scotland*.

The impowering of the *Scots* Episcopal Ministers by this and the first Clause, to set up their Meetings in any Town or Place in *Scotland*, seems also to derogate from the Act against Intruding into Churches, abovemention'd, Vol. 3. pag. 430. And at least 'twould seem to be necessary, that the Acts made to secure the Church against Intruders, should by some just Proviso be clearly preserv'd, viz. That part of the Act concerning the Church, p. 436. which encourages Preachers at vacant Churches by *North Forth*, and Acts of the same Nature, Vol. 3. pag. 492. and pag. 532. for preventing of Disorders in supplying and planting of Vacant Churches, wherein the Episcopal Party is charged with Rabblings and Tumults against Ministers lawfully sent to preach in Vacant Churches; and to prevent this, Magistrates are order'd, under the Penalties therein contain'd, to concur with the Presbyters in planting of Vacant Churches.

The 9th Clause declares and enacts by the Authority aforesaid, that no civil Pain, Forfeiture, or Disability whatsoever, shall be in any ways incurred by any Person or Persons, by reason of any Excommunication, Prosecution, in order to Excommunication, by the Church Judicatories in that part of *Great-Britain* called *Scotland*; and all civil Magistrates are hereby expressly prohibited and discharged to force or compel any Person or Persons to appear when summoned, or to give Obedience to any such Sentence when pronounc'd, any Law or Custom to the contrary notwithstanding.

This makes a perpetual Divorce betwixt the Civil and Ecclesiastick Powers, and leaves the Church of *Scotland* no more Power than a Philosopher; they are established in the Correction of Manners; they are confirm'd in their Government; they are in many Acts of Parliament, particularly in the 6th Act Parl. 1579. Vol. 1. p. 410, granted to have a Jurisdiction, and these Words do necessarily imply a coercive Power. The Church has enjoy'd the Concurrence of the Civil Power for bringing her Members under due Ecclesiastical Correction and Censure in every Establishment. The Privileges of Haly Kirk were confirm'd in every Reign before the Reformation; and there's no Man, the least known in Canon Law and Church History, ignorant that the Civil Magistrate did concur to make effectual Ecclesiastick Processes and Censures. At the Reformation, the Laws in favour of the Church were not simply rescinded, but in so far as they were contrary to the Reformation, and after the Reformation, the Power of the Church, their Processes and Censures were of the same Force, and had the same Concurrence and Authority of the Civil Magistrate under the different Forms of Government, Presbyterian or Episcopal. The Coronation Oath binds the Sovereign to root out Hereticks and Enemies to the true Worship of God, that shall be convicted by the true Kirk of God, and the true Kirk by the Laws as they stand, is the Establishment of the Kirk of *Scotland*; and thus, even the Supreme Civil Authority is engag'd to support the Censures of the Church Judicatories, and 'tis observable, that when Episcopacy was abolish'd by the Third Act of Parl. 1689, Vol. 3, P. 197, the Laws establishing Episcopacy were not abolished simply, but in so far *alterly*, as they were inconsistent with the Act; and the Twenty Second Act of the Parl. 1693, Vol. 3, P. 355, *in fine*, does Statute and Ordain, that the Lords of Her Majesty's Privy-Council, and all other Magistrates, Judges and Officers of Justice, give all due Assistance for making the Sentences and Censures of the Church and Judicatories thereof to be obey'd, or otherwise effectual as Accords.

'Tis true, that some have vainly imagin'd, that these Words *as Accords*, do take off from the force of the plain and Statutory Words, but with great respect, this is directly contrary to the Will of the Law, which commands Assistance and supposes it due, and the possession of the Church does confirm, or indeed would alone be sufficient to establish a Right to require the concurrence of the Civil Powers. So that the depriving the Church of the concurrence of the Civil Authority in these Matters, is to leave her the bare Name of Discipline, which could never be the design of a fair Treaty.

'Tis worth the consideration of any Christian Legislature, that this Clause is wholly Foreign to the main Invention of the Bill; The Bill pretends to set Men at Liberty in point of Conscience, and this to enlarge them in point of Immorality, and inconsistent with Civil

as well as Ecclesiastical Policy; for its certainly an Advantage, that the Church should enjoy effectually those Censures, to prevent the more severe Application of the Laws by the Civil Magistrate, the Church intends a Correction and Amendment of Mind and Life, before Men grow sturdy enough to be the Object of *Vindicta publica* mixed with civil punishment or not. And 'tis further to be observ'd, That in this awful indulgent Clause, the new Laws against every branch of Immorality and Profaneness are shaken, for the power of the Church and the concurrence of the Civil Magistrate, are interwoven in the Acts of the Parliament of Scotland upon these Heads.

And lastly, Tho' these things were not so evident, as indeed they are, if those Objections be admitted at least as probable Grounds against this Bill, yet they must have a great force, since the subject of the Question is the Security of the Church of Scotland, which is made an Essential and Fundamental Condition of the Treaty of Union; and 'tis of the last Consequence not to come near Conditions that are Fundamental, especially where the Church is in the least Danger, and where the People that are possess'd of the Legal Establishment, must be under the greatest uneasiness, for nothing that is Fundamental, even in Civil Affairs, and much more where People apprehend the Church and Religion may be in any Hazard, ought to be touch'd without the greatest necessity. And indeed, if this, which is the most Solemn and Absolute Condition of the Treaty, can admit of Distinctions to defeat the Interest of the Church, the Treaty will be of very small Force or Security in any part of it.

The Door which must be set open to all Profaneness, by exempting those who shall decline the Communion of the Church of Scotland, cannot be shut, by setting up an Episcopal Jurisdiction among Episcopal Dissenters there, for that's contrary to the Union Act, which abolishes Episcopacy for ever in Scotland, in pursuance of the Claim of Right. Nor can the Scots Episcopal Clergy be subject to English or Irish Bishops, because the Union Act, Vol. 3, pag. 757. provides, That none of the Subjects of Scotland shall be lyable to, but all and every of them, free from any Oath, Test or Subscription within that Kingdom, contrary to, or inconsistent with the said true Protestant Religion, Presbyterian Church Government, Worship and Discipline, as above Establish'd, and that the same within the Bounds of that Church and Kingdom shall never be impos'd upon, as required of them in any sort. By this it seems plain, That the Episcopal Clergy in Scotland cannot give Assent or Consent, Oath or Subscription to any other Form of Doctrine, Worship and Discipline, but that of the Church there Establish'd by Law.

Besides, this is utterly inconsistent with the Words of the Treaty, whereby she is declar'd to be only Church in that Kingdom, and the 49th Act of the forecited Parliament, 1579. which grants the Jurisdiction of the Church in the Correction of Manners, &c. declares there's no other Face of a Kirk nor Face of Religion, than that Establish'd, and this Act is expressly ratified by the Act of 1592. in favour of Presbyterian Church Government, which again is ratified by the 5th Act of the Parliament 1690. and that expressly by the Treaty of Union. Nor indeed would the Impotent appearance of Power in the Episcopal Clergy be effectual to restrain Immorality, unless the Civil Magistrate did concur with them; and 'twere very absurd, that the Clergy Tolerated should have the concurrence of the Civil Magistrate, while those who are Establish'd by Solemn Treaty, are deny'd it.

The 11th Clause of the Bill about Popish Recusants, or those that deny by Preaching or Writing, the Doctrine of the Ever Blessed Trinity needs a great deal of Explanation, because the Act for preventing the growth of Popery, Vol. 3, pag. 565. ordains all Magistrates to detain Papists, Priests, Jesuits, &c. who shall be presented to them, Prisoners, &c. and recommends to the Presbyters of the Kingdom, to give in Lists of Children under Popish Parents, Tutors, Curates or other Papists within their respective Bounds, which may be evaded, if Magistrates be not order'd to concur with the Church, in obliging Papists to renounce Popery, in presence of the Presbyters where they live, &c. and likewise according to the Act, Vol. 3, pag. 505. about Protestant Servants in Popish Families. And the provision made in that Clause against Blasphemy, seems to be short of our Laws against that Tremendous Crime, particularly that in Vol. 2, pag. 418. which ratifies that of King Charles II. Vol. 2, pag. 483.

It is further to be observ'd, that the Bill does not extend to the Clergy of the Church of England, who are not subject to the same Laws as the Clergy of Scotland, and that the Bill does not extend to the Clergy of the Church of Ireland, who are not subject to the same Laws as the Clergy of Scotland.

And lastly, it is to be observ'd, that the Bill does not extend to the Clergy of the Church of Scotland, who are not subject to the same Laws as the Clergy of Scotland.

THE
CASE
OF THE
SCOTS
Toleration.